

### REMARKS

A Request for Continued Examination (RCE) 37 C.F.R. § 1.114 is being filed contemporaneously herewith. Applicants request reconsideration of the above-identified application.

Claims 1, 2, 6-11, 14, 28-30, 32-36, 38-41 and 43-48 were pending in this application, with Claim 45 being withdrawn from consideration. Claims 1, 28, 32, 38, 47 and 48 have been amended, and new Claims 49 and 50 have been added. Therefore, Claims 1, 2, 6-11, 14, 28-30, 32-36, 38-41 and 43-50 are now pending in this application.

Claims 1, 2, 6-11, 14, 28-30, 32-36, 38-41 and 43-48 stand rejected under 35 U.S.C. § 103(a).

Applicants submit that all claims are now in condition for allowance. Accordingly, reconsideration and allowance of all pending claims is respectfully requested.

#### Applicants' Statement of the Substance of Examiner Interview

An Examiner's Interview was conducted on Wednesday, October 15, 2008, in view of the Office Action mailed August 4, 2008. Attendees of the telephone interview included Examiners Morgan and Newhouse and applicants' representatives Emily Peyser and T. Stasui Nowak. Applicants thank the Examiners for the time spent during the interview.

Applicants received the Examiners' Interview Summary, mailed on October 24, 2008. As stated in the Interview Summary, applicants' proposed claim amendments were discussed during the interview. In particular, it was explained that these amendments were directed toward clarifying the differences between the claimed invention and U.S. Patent No. 3,265,287, issued to Hovland (hereinafter "Hovland"). Although no agreement was reached with respect to the pending claims, applicants again thank the Examiners for their time.

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### Claim Rejections Under 35 U.S.C. § 103

Claims 1, 2, 6-8, 10, 11, 14, 28-30, 32-36, 38, 43, 44 and 46-48 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,834,552, issued to Makowka (hereinafter "Makowka"), in view of Hovland. In addition, Claims 9, 39, and 40, stand rejected as obvious over Makowka in view of Hovland, and further in view of U.S. Patent No. 3,650,463, issued to Christiansen et al. (hereinafter "Christiansen"). Further, Claim 41 stands rejected as being obvious over Makowka in view of Hovland, and further in view of U.S. Patent No. 4,607,749, issued to Jacob (hereinafter "Jacob"). Applicants respectfully disagree.

To establish a *prima facie* case of obviousness, the cited prior art references must teach or suggest all of the claim elements. In addition, there must be some apparent reason, either in the references or in the knowledge of one skilled in the art, to modify the reference or to combine the elements of multiple references with a reasonable expectation of success.

Makowka is generally directed to a tamper-evident seal for an envelope and a method of making the same. The Office Action cites Makowka as teaching an envelope having a cavity and a flap closure with an adhesive closure and formed from a multilayer polyethylene film. The Office Action admits that Makowka does not teach or suggest "a tearable closure for the envelope having rows [of] non-perforating perforations."

Hovland is generally directed to a hermetically sealed cigarette package with an opening feature. The Office Action cites Hovland as teaching a container with a tearable adhesive closure flap with perforations in an outer layer but not an inner layer to provide tamperproof opening means which maintains the freshness of the contents. Referring to Figure 2 of Hovland, the perforations 2 only extend through the outer layers 10 and 11 but not through the other plies of the material (see Column 2, lines 22-26, of Hovland). In contrast, the inner plies of the material 12, 13, 14, and 15 are not perforated at any point (see Column 2, lines 26-27).

Referring to Figure 6, Hovland teaches that the package can be opened by tearing the flap following along the line of perforations on the outer layers 10 and 11 (see Column 3, lines 19-21).

Christiansen is generally directed to an opening strip for a self-contained envelope. Referring to Figures 1 and 2 of Christiansen, the opening strip includes two rows of perforations 8 extending fully through the front face of the closure flap 5 of the envelope and a pull tab 12.

Jacob is generally directed to an easy open paper envelope having an array of cut scores 22 such that a wall of the paper envelope may be torn in a controlled manner.

The cited references, whether alone or in any combination, fail to teach or suggest all of the claim elements of independent Claims 1, 28, 32, 38, 47, and 48. In that regard, Claims 1, 28, 32, 38, 47, and 48 recite language directed to areas of reduced thickness, score lines, or perforations on an interior surface of the container. The interior orientation of the film or side containing areas of reduced thickness, score lines, or perforations of the claimed invention reduces the possibility that an unwanted tear may develop in the container. Such an unwanted tear is much more likely when perforations are exposed to the exterior of the container. (See e.g., specification page 6, lines 7-11, and page 11, lines 13-15.)

Specifically, the cited references fail to teach or suggest the following:

- "a tearable flap...positionable in open and closed orientations...a first side having areas of reduced thickness,... and a second side having a continuous film material,... such that when the flap is positioned in the closed orientation the first side is an inner side and the second side is an exterior side," as recited in Claim 1;
- "A tearable closure...comprising...[a] first film facing the interior of the sealed container and including rows of perforations or score lines that extend through the

thickness of the first film...and [a] second film facing the exterior of the sealed container and being a continuous film material," as recited in Claim 28;

- "a tearable closure...being positionable in open or closed orientations...wherein the first side has score lines that extend through a portion of the thickness of the film and the second side does not include score lines, wherein the first side is an inner side when the closure is positioned in the closed orientation," as recited in Claim 32;
- "a tearable flap...wherein the flap comprises an inner translucent film and an outer opaque film, wherein the inner translucent film has perforations that extend completely through the thickness of the inner translucent film and the outer opaque film does not have perforations..., wherein the inner film is oriented towards the cavity when the container is closed," as recited in Claim 38;
- "a polymer film having first and second sides and a thickness, the first side having score lines that extend through a portion of the thickness and the second side not having score lines...such that when the container is sealed the first side is oriented toward the interior of the container and the second side is oriented toward the exterior of the container," as recited in Claim 47; and
- "A tearable closure...comprising first and second polymer films bonded together, the first film facing the interior of the sealed container and including rows of perforations or score lines that extend through the thickness of the first film...and the second film facing the exterior of the sealed container and being a continuous film material," as recited in Claim 48.

In contrast, Hovland teaches away from disposing perforations on the inner layers of the sealed package. In that regard, Hovland teaches that the outer layers of the package are

perforated, and the imperforate portion of the wrapper adheres to the inner side of the outer perforated layer (see Figure 2 and Column 2, lines 22-28, of Hovland). Hovland emphasizes that the term imperforate is intended to mean that the material is not perforated at any point which would disturb the protective properties of the package (see Column 2, lines 17-20).

Therefore, for at least these reasons the cited references do not render obvious the claims at issue. Accordingly, applicants request withdrawal of these claim rejections.

#### New Claims 49-50

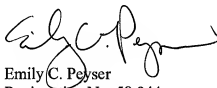
New Claims 49-50 have been added. Applicants respectfully submit that these new claims do not present any new subject matter and are also in condition for allowance.

#### CONCLUSION

In view of the foregoing remarks, applicants submit that all claims are in condition for allowance. If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to contact the undersigned representative.

Respectfully submitted,

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